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CENTRAL LAND CO. OF BUCHANAN V. JOHNSTON.—Decided at Staunton, September 27, 1897.—*Harrison, J.*:

1. STATUTE OF FRAUDS—*Memorandum—Resolution of directors of a corporation duly signed.* A resolution of a board of directors of a corporation duly signed by its president and secretary, which sufficiently sets forth the terms of the contract, is a compliance with the statute of frauds as to contracts for the sale of real estate.

2. SPECIFIC PERFORMANCE—*Sale of real estate—Contract signed only by party to be charged.* Specific performance of a contract for the sale of real estate will be decreed against the party who signed the contract, although the other party did not sign and there was no mutuality of remedies between the parties at the time the contract was made. The filing of the bill by the other party for specific performance makes the remedy and the obligation of the contract mutual.

3. SPECIFIC PERFORMANCE—*Contract for sale of real estate—Case in judgment.* Under the terms of the contract in suit appellant contracted to purchase the land in controversy of the appellee at the price of \$2,500, if a suit mentioned in the contract "goes in his favor." The suit was decided against him in the Circuit Court, but that decree, on appeal, was reversed by this court.

Held: The appellant must take the land and pay the price agreed, with interest from the date of the decree of reversal. This right of the appellee could not be taken away nor abridged by the notice from the appellant that it would not be responsible for costs, which it had contracted to pay, after the decree in the Circuit Court. Nor can the rights of appellee be affected by the depreciation in value of the land before the final termination of said suit.

CRAIG & BUMGARDNER, TRUSTEES, V. HOGE & HUTCHINSON.—Decided at Richmond, November 18, 1897.—*Riely, J.*:

1. CONFLICT OF JURISDICTION—*How determined.* In case of conflict of jurisdiction between two courts having concurrent jurisdiction, the general rule is that the court which first acquires cognizance of the controversy, or obtains possession of the property in dispute, is entitled to retain it until the end of the litigation, and should decide all questions which legitimately flow out of the controversy. Until then all proceedings in the second suit should be stayed.

2. JURISDICTION—*How acquired—Conflict of jurisdiction.* Jurisdiction of a court is acquired by the issue and service of process, and, in case of conflict between courts of concurrent jurisdiction, the date of service of the process determines the priority of the jurisdiction.

3. CONFLICT OF JURISDICTION—*Creditor's bill—Case at bar.* Technical creditors' bills are exceptions to the general rule which pertains to a conflict of jurisdiction between courts of concurrent jurisdiction, but a bill which assails one of several debts secured in a deed of trust and seeks to obtain its place in the distribution of the trust fund, is not such a bill as excepts it from the general rule, and must await the termination of a prior suit brought by the trustee for the purpose of administering the trust fund.

4. TRUSTEES—*Suit to administer trusts—Fraudulent debts—Rights of unsecured creditor.* In a suit by trustees, to administer, under the orders of the court, a trust

fund created by deed of trust to secure creditors, it is entirely competent for the court to pass upon the validity of any debt secured in the deed. Creditors not secured may, in a proper case, be admitted parties, raise all proper issues, and obtain complete relief.

5. FRAUDULENT CONVEYANCES—*Lien of attacking creditor—Fraudulent and bona fide debts secured by same deed.* A creditor who successfully assails a deed of trust on the ground that it secures a fraudulent debt along with *bona fide* debts is not entitled to be substituted to the position formerly occupied by the fraudulent debt. His lien, if not previously acquired, dates only from the commencement of his suit, and is subordinate to liens previously acquired. The deed of trust is valid as to the *bona fide* debts secured, and the fraudulent debt is eliminated and treated as if had never been inserted in the deed.

6. CHANCERY PRACTICE—*Dominion of complainant—Order of reference—Second suit by another party—Case at bar.* A suit by trustees to administer the trust is under the dominion of the complainants until there has been an order of reference, and no creditor who is not a party to the suit can become such without the leave of the court, which cannot be obtained without consent, until the next term. Although this may occasion some delay, it cannot justify the institution of another suit by such creditor to accomplish what could be effected in the pending suit. In the case at bar, the delay would have been far preferable to the conflict between the two co-ordinate courts having concurrent jurisdiction.

MARY L. JORDAN V. THE BUENA VISTA COMPANY AND OTHERS.—

Decided at Richmond, November 18, 1897.—*Buchanan, J.*

1. VENDOR'S LIEN—*Duration of—Case in judgment.* A vendor's lien exists until it is clearly shown that it has been waived or released, or has been satisfied. In the case in judgment it is clearly shown that, as between the appellant and the debtor, the lien was expressly reserved, and has not been waived, released, nor satisfied.

2. ESTOPPEL—*Ignorance of misrepresentations—Intent that representations should be acted on—Case in judgment.* In order to create an equitable estoppel, or an estoppel based on a party's conduct, it must be shown by the party claiming the benefit of the estoppel that he was ignorant of the truth in regard to the misrepresentation made, and that he was permissibly ignorant thereof. Furthermore, the representation made must have been made with the intention, either actually or reasonably to be inferred by the person to whom it was made, that it should be acted on. In the case in judgment neither of these requisites exists, and the appellant is not estopped to set up her vendor's lien as against the appellees. The amount due the appellant was a part of the original purchase price of land for which a vendor's lien was reserved. It has never been paid, and the conduct of the appellant has not been such as to estop her from asserting her lien.

BLAKEMORE V. WISE AND OTHERS.—Decided at Richmond, November 18, 1897.—*Harrison, J.*

1. MARSHALLING ASSETS—*When not invoked—Double security—Common debtor.* The equity of marshalling securities is not invoked against the doubly secured